HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.564 of 2005 (SS)

1. Smt. Premwati w/o late Atar Singh
2. Neeraj Kumar s/o late Atar Singh
   Both residents of village Chanwa P.O. Baznagar
   District Etah ..... Petitioner

Versus

1. State of Uttaranchal
2. Deputy Inspector General of Police,
   Kumaon Region, Nainital
3. Superintendent of Police, Nainital
4. Additional Director General of Police,
   Administration, Uttaranchal, Dehradun

..... Respondents

Sri C.K. Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 9.3.2006

Hon'ble Rajesh Tandon J.

Heard Sri C.K. Sharma counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner have prayed for a writ of mandamus directing the respondents to give appointment to the petitioner under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules.

Briefly stated the father of the petitioner on.2 and husband of petitioner no. 1 namely Sri Atar Singh were working as Constable in the Police Department, and while he was on duty he was shot down by the robber in he year 1987. After the death of the husband the petitioner no.1 moved an application before the respondents for her appointment on compassionately ground. She was called for interview vide letter

dated 22.12.1989 but she was not given appointment. Thereafter petitioner no. 1 moved a representation and he was called for interview on 16.12.1991 but he was not given appointment. Thereafter he was again called for interview on 4.6.92 but in the second time he was not given appointment on compassionate ground. The petitioners have alleged that they are continuously making representations to the respondents for appointment under compassionate ground.

The petitioners have alleged that at the time of death of his father, petitioner no. 2 was minor and his mother applied for appointment but no appointment was given to her. Petitioner No.1 attained the age of majority on 21.7.2003. The petitioner no. 2 has preferred a representation on 6.8.2004 but the same was rejected by the respondents vide order dated 12.6.2004. The respondents vide order dated 14.2.2005 have again rejected the claim of the petitioners reiterating their earlier grounds that since the application is belated and time period more than 16 years have lapsed no appointment can be given under compassionate ground.

The counsel for the petitioners has submitted that G.O No. 225/karmic-2/2002 dated 8.6.2002, by which direction was issued not to send belated applications for appointment compassionate ground for condonation of delay to the Directorate was cancelled vide notification dated 1495/karmic Vibhag/2002 on 31.8.2002 so the Government order dated 8.6.2002 mentioned in the impugned order, does not come to operate in the present case.

It may be pointed out that the father of the petitioner no.1 died in the year 1987 and cause of action accrued to the petitioner after the death of his father. The privilege was

available to the petitioner on the date when his father died. As such the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974, is applicable in the case of the petitioner. Rules 5 of the said Rules provides the entitlement of the petitioner to get the employment. Rule 5 of the said Rules is quoted below:

5. Recruitment of a member of the family of the deceased-*(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-*

(i) fulfils the educational qualifications prescribed for the post.

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant.

Provided that where the State Government is satisfied that the time limit fixed for making the application for

employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

Proviso to Rule 5 above gives ample power to the State Government extend the time limit of five years for filing application. In the present case at the time of death of his father the petitioner was minor. His mother preferred the application to the Department that her case for compassionate appointment be considered but she was not appointed in the Department although her interview was taken.

The scheme of compassionate appointment itself renders that the appointment may be made after five years if the State Government is satisfied that such time limit would cause undue hardship to the petitioner.

Thus it appears a fit case where relaxation in time period for filing application for employment under compassionate ground may be given.

In view of above, a writ of certiorari is issued quashing the order-dated 14.2.2005. The respondents are directed to consider the case of the petitioner for compassionate appointment. Liberty is given to the petitioner to file a fresh representation within two weeks after the receipt of the certified copy of this order, which shall be decided by the respondents within one month thereafter.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 9.3.2006 **Rajesh Tandon J.**

*Dhyani